

105TH CONGRESS
1ST SESSION

H. R. 1845

To amend the Internal Revenue Code of 1986 to reduce estate taxes on family-owned businesses.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1997

Mr. ETHERIDGE (for himself, Mr. MCINTYRE, Mr. HEFNER, Mrs. CLAYTON, Mr. COBLE, and Mr. PRICE of North Carolina) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to reduce estate taxes on family-owned businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Farm and
5 Small Business Estate Tax Relief Act of 1997”.

6 **SEC. 2. FAMILY-OWNED BUSINESS EXCLUSION.**

7 (a) IN GENERAL.—Part III of subchapter A of chap-
8 ter 11 of the Internal Revenue Code of 1986 (relating to
9 gross estate) is amended by inserting after section 2032A
10 the following new section:

1 **“SEC. 2032B. FAMILY-OWNED BUSINESS EXCLUSION.**

2 “(a) IN GENERAL.—

3 “(1) ALLOWANCE OF EXCLUSION.—In the case
4 of an estate of a decedent to which this section ap-
5 plies, the value of the gross estate shall not include
6 the lesser of—

7 “(A) the adjusted value of the qualified
8 family-owned business interests of the decedent
9 otherwise includible in the estate, or

10 “(B) the applicable amount.

11 “(2) APPLICABLE AMOUNT.—For purposes of
12 this subsection, the term ‘applicable amount’ means
13 the amount determined under the following table:

“In the case of decedents dying in calendar year—	The applicable amount is—
1997	\$150,000
1998	300,000
1999	450,000
2000	600,000
2001	750,000
2002 and thereafter	900,000.

14 “(3) INFLATION ADJUSTMENT.—In the case of
15 decedents dying in calendar years after 2002, the
16 applicable amount in effect under paragraph (1)(B)
17 shall be increased by an amount equal to—

18 “(A) such amount, multiplied by

19 “(B) the cost-of-living adjustment under
20 section 1(f)(3) for the calendar year in which
21 the taxable year begins, determined by sub-

1 stituting ‘calendar year 2001’ for ‘calendar year
2 1992’ in subparagraph (B) thereof.

3 If any amount as adjusted under the preceding sen-
4 tence is not a multiple of \$500, such amount shall
5 be rounded to the nearest multiple of \$500.

6 “(b) ESTATES TO WHICH SECTION APPLIES.—

7 “(1) IN GENERAL.—This section shall apply to
8 an estate if—

9 “(A) the decedent was (at the date of the
10 decedent’s death) a citizen or resident of the
11 United States,

12 “(B) the sum of—

13 “(i) the adjusted value of the qualified
14 family-owned business interests described
15 in paragraph (2), plus

16 “(ii) the amount of the gifts of such
17 interests determined under paragraph (3),
18 exceeds 50 percent of the adjusted gross estate,
19 and

20 “(C) during the 8-year period ending on
21 the date of the decedent’s death there have
22 been periods aggregating 5 years or more dur-
23 ing which—

1 “(i) such interests were owned by the
2 decedent or a member of the decedent’s
3 family, and

4 “(ii) there was material participation
5 (within the meaning of section
6 2032A(e)(6)) by the decedent or a member
7 of the decedent’s family in the operation of
8 the business to which such interests relate.

9 “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED
10 BUSINESS INTERESTS.—The qualified family-owned
11 business interests described in this paragraph are
12 the interests which—

13 “(A) are included in determining the value
14 of the gross estate (without regard to this sec-
15 tion), and

16 “(B) are acquired by any qualified heir
17 from, or passed to any qualified heir from, the
18 decedent (within the meaning of section
19 2032A(e)(9)).

20 “(3) INCLUDIBLE GIFTS OF INTERESTS.—The
21 amount of the gifts of qualified family-owned busi-
22 ness interests determined under this paragraph is
23 the excess of—

24 “(A) the sum of—

1 “(i) the amount of such gifts from the
 2 decedent to members of the decedent’s
 3 family taken into account under section
 4 2001(b)(1)(B), plus

5 “(ii) the amount of such gifts other-
 6 wise excluded under section 2503(b),
 7 to the extent such interests are continuously
 8 held by members of such family (other than the
 9 decedent’s spouse) between the date of the gift
 10 and the date of the decedent’s death, over

11 “(B) the amount of such gifts from the de-
 12 cedent to members of the decedent’s family oth-
 13 erwise included in the gross estate.

14 “(c) ADJUSTED GROSS ESTATE.—For purposes of
 15 this section, the term ‘adjusted gross estate’ means the
 16 value of the gross estate (determined without regard to
 17 this section)—

18 “(1) reduced by any amount deductible under
 19 paragraph (3) or (4) of section 2053(a), and

20 “(2) increased by the excess of—

21 “(A) the sum of—

22 “(i) the amount of gifts determined
 23 under subsection (b)(3), plus

24 “(ii) the amount (if more than de-
 25 minimis) of other transfers from the dece-

1 dent to the decedent's spouse (at the time
2 of the transfer) within 10 years of the date
3 of the decedent's death, plus

4 “(iii) the amount of other gifts (not
5 included under clause (i) or (ii)) from the
6 decedent within 3 years of such date, other
7 than gifts to members of the decedent's
8 family otherwise excluded under section
9 2503(b), over

10 “(B) the sum of the amounts described in
11 clauses (i), (ii), and (iii) of subparagraph (A)
12 which are otherwise includible in the gross es-
13 tate.

14 For purposes of the preceding sentence, the Secretary may
15 provide that de minimis gifts to persons other than mem-
16 bers of the decedent's family shall not be taken into ac-
17 count.

18 “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-
19 OWNED BUSINESS INTERESTS.—For purposes of this sec-
20 tion, the adjusted value of any qualified family-owned
21 business interest is the value of such interest for purposes
22 of this chapter (determined without regard to this sec-
23 tion), reduced by the excess of—

24 “(1) any amount deductible under paragraph
25 (3) or (4) of section 2053(a), over

1 “(2) the sum of—

2 “(A) any indebtedness on any qualified
3 residence of the decedent the interest on which
4 is deductible under section 163(h)(3), plus

5 “(B) any indebtedness to the extent the
6 taxpayer establishes that the proceeds of such
7 indebtedness were used for the payment of edu-
8 cational and medical expenses of the decedent,
9 the decedent’s spouse, or the decedent’s depend-
10 ents (within the meaning of section 152), plus

11 “(C) any indebtedness not described in
12 subparagraph (A) or (B), to the extent such in-
13 debtedness does not exceed \$10,000.

14 “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-
15 EST.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the term ‘qualified family-owned business inter-
18 est’ means—

19 “(A) an interest as a proprietor in a trade
20 or business (including farming) carried on as a
21 proprietorship, or

22 “(B) an interest in an entity carrying on
23 a trade or business (including farming), if—

24 “(i) at least—

1 “(I) 50 percent of such entity is
2 owned (directly or indirectly) by the
3 decedent and members of the decedent’s family,
4

5 “(II) 70 percent of such entity is
6 so owned by members of 2 families, or

7 “(III) 90 percent of such entity
8 is so owned by members of 3 families,
9 and

10 “(ii) for purposes of subclause (II) or
11 (III) of clause (i), at least 30 percent of
12 such entity is so owned by the decedent
13 and members of the decedent’s family.

14 “(2) LIMITATION.—Such term shall not in-
15 clude—

16 “(A) any interest in a trade or business
17 the principal place of business of which is not
18 located in the United States,

19 “(B) any interest in an entity, if the stock
20 or debt of such entity or a controlled group (as
21 defined in section 267(f)(1)) of which such en-
22 tity was a member was readily tradable on an
23 established securities market or secondary mar-
24 ket (as defined by the Secretary) at any time

1 within 3 years of the date of the decedent's
2 death,

3 “(C) any interest in a trade or business
4 not described in section 542(c)(2), if more than
5 35 percent of the adjusted ordinary gross in-
6 come of such trade or business for the taxable
7 year which includes the date of the decedent's
8 death would qualify as personal holding com-
9 pany income (as defined in section 543(a)),

10 “(D) that portion of an interest in a trade
11 or business that is attributable to—

12 “(i) cash or marketable securities, or
13 both, in excess of the reasonably expected
14 day-to-day working capital needs of such
15 trade or business, and

16 “(ii) any other assets of the trade or
17 business (other than assets used in the ac-
18 tive conduct of a trade or business de-
19 scribed in section 542(c)(2)), the income of
20 which is described in section 543(a) or in
21 subparagraph (B), (C), (D), or (E) of sec-
22 tion 954(c)(1) (determined by substituting
23 ‘trade or business’ for ‘controlled foreign
24 corporation’).

25 “(3) RULES REGARDING OWNERSHIP.—

1 “(A) OWNERSHIP OF ENTITIES.—For pur-
2 poses of paragraph (1)(B)—

3 “(i) CORPORATIONS.—Ownership of a
4 corporation shall be determined by the
5 holding of stock possessing the appropriate
6 percentage of the total combined voting
7 power of all classes of stock entitled to vote
8 and the appropriate percentage of the total
9 value of shares of all classes of stock.

10 “(ii) PARTNERSHIPS.—Ownership of a
11 partnership shall be determined by the
12 owning of the appropriate percentage of
13 the capital interest in such partnership.

14 “(B) OWNERSHIP OF TIERED ENTITIES.—
15 For purposes of this section, if by reason of
16 holding an interest in a trade or business, a de-
17 cedent, any member of the decedent’s family,
18 any qualified heir, or any member of any quali-
19 fied heir’s family is treated as holding an inter-
20 est in any other trade or business—

21 “(i) such ownership interest in the
22 other trade or business shall be dis-
23 regarded in determining if the ownership
24 interest in the first trade or business is a

1 qualified family-owned business interest,
2 and

3 “(ii) this section shall be applied sepa-
4 rately in determining if such interest in
5 any other trade or business is a qualified
6 family-owned business interest.

7 “(C) INDIVIDUAL OWNERSHIP RULES.—
8 For purposes of this section, an interest owned,
9 directly or indirectly, by or for an entity de-
10 scribed in paragraph (1)(B) shall be considered
11 as being owned proportionately by or for the en-
12 tity’s shareholders, partners, or beneficiaries. A
13 person shall be treated as a beneficiary of any
14 trust only if such person has a present interest
15 in such trust.

16 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY
17 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-
18 ESTS.—

19 “(1) IN GENERAL.—There is imposed an addi-
20 tional estate tax if, within 10 years after the date
21 of the decedent’s death and before the date of the
22 qualified heir’s death—

23 “(A) the material participation require-
24 ments described in section 2032A(c)(6)(B) are
25 not met with respect to the qualified family-

1 owned business interest which was acquired (or
2 passed) from the decedent,

3 “(B) the qualified heir disposes of any por-
4 tion of a qualified family-owned business inter-
5 est (other than by a disposition to a member of
6 the qualified heir’s family or through a qualified
7 conservation contribution under section
8 170(h)),

9 “(C) the qualified heir loses United States
10 citizenship (within the meaning of section 877)
11 or an event described in subparagraph (A) or
12 (B) of section 877(e)(1) occurs with respect to
13 such heir, and such heir does not comply with
14 the requirements of subsection (g), or

15 “(D) the principal place of business of a
16 trade or business of the qualified family-owned
17 business interest ceases to be located in the
18 United States.

19 “(2) ADDITIONAL ESTATE TAX.—

20 “(A) IN GENERAL.—The amount of the
21 additional estate tax imposed by paragraph (1)
22 shall be equal to—

23 “(i) the applicable percentage of the
24 adjusted tax difference attributable to the
25 qualified family-owned business interest

(as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

“(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

“(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

“If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:
1 through 6	100
7	80
8	60
9	40
10	20.

“(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

“(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (h)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection

1 (f)(1)(C)) shall be treated as a qualified family-
2 owned business interest only if the interest passes or
3 is acquired (or is held) in a qualified trust.

4 “(2) QUALIFIED TRUST.—The term ‘qualified
5 trust’ means a trust—

6 “(A) which is organized under, and gov-
7 erned by, the laws of the United States or a
8 State, and

9 “(B) except as otherwise provided in regu-
10 lations, with respect to which the trust instru-
11 ment requires that at least 1 trustee of the
12 trust be an individual citizen of the United
13 States or a domestic corporation.

14 “(h) OTHER DEFINITIONS AND APPLICABLE
15 RULES.—For purposes of this section—

16 “(1) QUALIFIED HEIR.—The term ‘qualified
17 heir’—

18 “(A) has the meaning given to such term
19 by section 2032A(e)(1), and

20 “(B) includes any active employee of the
21 trade or business to which the qualified family-
22 owned business interest relates if such employee
23 has been employed by such trade or business
24 for a period of at least 10 years before the date
25 of the decedent’s death.

1 “(2) MEMBER OF THE FAMILY.—The term
2 ‘member of the family’ has the meaning given to
3 such term by section 2032A(e)(2).

4 “(3) APPLICABLE RULES.—Rules similar to the
5 following rules shall apply:

6 “(A) Section 2032A(b)(4) (relating to de-
7 cedents who are retired or disabled).

8 “(B) Section 2032A(b)(5) (relating to spe-
9 cial rules for surviving spouses).

10 “(C) Section 2032A(c)(2)(D) (relating to
11 partial dispositions).

12 “(D) Section 2032A(c)(3) (relating to only
13 1 additional tax imposed with respect to any 1
14 portion).

15 “(E) Section 2032A(c)(4) (relating to due
16 date).

17 “(F) Section 2032A(c)(5) (relating to li-
18 ability for tax; furnishing of bond).

19 “(G) Section 2032A(c)(7) (relating to no
20 tax if use begins within 2 years; active manage-
21 ment by eligible qualified heir treated as mate-
22 rial participation).

23 “(H) Section 2032A(e)(10) (relating to
24 community property).

1 “(I) Section 2032A(e)(14) (relating to
 2 treatment of replacement property acquired in
 3 section 1031 or 1033 transactions).

4 “(J) Section 2032A(f) (relating to statute
 5 of limitations).

6 “(K) Section 6166(b)(3) (relating to farm-
 7 houses and certain other structures taken into
 8 account).

9 “(L) Subparagraphs (B), (C), and (D) of
 10 section 6166(g)(1) (relating to acceleration of
 11 payment).

12 “(M) Section 6324B (relating to special
 13 lien for additional estate tax).”

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for part III of subchapter A of chapter 11 of such Code
 16 is amended by inserting after the item relating to section
 17 2032A the following new item:

“Sec. 2032B. Family-owned business exclusion.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to estates of decedents dying after
 20 the date of the enactment of this Act.

○